



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0136; FRL-9976-44-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Revisions to PSD Permitting Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to fully approve the State Implementation Plan (SIP) revision submitted by the State of Montana on October 14, 2016. Montana's October 14, 2016 submittal revises their prevention of significant deterioration (PSD) regulations. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by EPA-R08-OAR-2018-0136 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

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I. Background

In Montana's letter from Governor Steve Bullock to EPA Regional Administrator Shaun McGrath (governor's letter) dated September 21, 2016, Montana referenced two actions for the EPA to consider for approval into Montana's federally approved SIP: 1) Revisions to PSD Permitting Provisions; and 2) Montana's 2015 Revised 8-hour ozone NAAQS initial designations. Montana's 2015 revised 8-hour ozone NAAQS initial designations is not part of Montana's SIP, and therefore does not require action under CAA section 110. In this proposed rulemaking action, the EPA is proposing full approval of Montana's revision to their PSD permitting provisions, and the EPA is taking no action on Montana's 2015 revised 8-hour ozone NAAQS initial designations.

Montana's October 14, 2016 Submittal

Section 165(e)(2) of the federal Clean Air Act (CAA) requires a proposed major emitting facility to conduct monitoring for, among other emissions, particulate matter with a diameter of less than 2.5 micrometers (PM_{2.5}).

On May 16, 2008, EPA promulgated the rule, “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321) (the 2008 PM_{2.5} New Source Review (NSR) Implementation Rule) and on October 20, 2010 EPA promulgated the rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864) (the 2010 Increment Rule). The 2010 Increment Rule adopted regulations setting the SMC for PM_{2.5} at 4 micrograms per cubic meter averaged over 24 hours. A SMC may be used to exempt sources from preconstruction monitoring when modeled impacts from the proposed facility, or the existing air quality level in the area of the proposed source, is less than the SMC.

The Board of Environmental Review of the State of Montana (the Board) revised Administrative Rules of Montana (ARM) 17.8.818(7)(a)(iii) to adopt the same SMC for PM_{2.5} as the federal regulation, effective October 14, 2011 (See docket – MAR Notice No. 17-322.). These revisions, which were submitted to the EPA on August 21, 2012, addressed the requirements of the 2008 PM_{2.5} NSR Implementation Rule and the 2010 Increment Rule, including setting the SMC for PM_{2.5} at 4 micrograms per cubic meter, averaged over a 24-hour period. Subsequently, portions of the 2010 Increment rule were vacated by the federal courts (*Sierra Club v. EPA*, 705 F. 3d 458 (D.C. Cir. 2013)). Among other things, the court vacated the PM_{2.5} SMC as not allowed by the CAA. On December 9, 2013, the EPA promulgated the rule “Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers – Significant Impact Levels and Significant Monitoring Concentration: Removal of Vacated Elements.” (78 FR 73698). This rulemaking revised the affected NSR-PSD rules accordingly, in

which the EPA amended 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to reduce the SMC to 0 micrograms per cubic meter and eliminate the 24-hour averaging period.

Because the EPA amended its SMC regulations, the Montana Department of Environmental Quality (MDEQ) requested the Board to amend its rule, ARM 17.8.818(7)(a)(iii). However, the MDEQ did not recommend that the Board remove the 24-hour averaging period for the PM_{2.5} SMC from the rule. On March 24, 2015, Montana submitted SIP revisions to the EPA which addressed the court's decisions (except for removing the 24-hour averaging period); this submittal superseded and replaced these aspects of Montana's August 21, 2012 submittal.

In response to Montana's March 24, 2015 SIP revisions, on April 20, 2016 (81 FR 23180), the EPA published a final rulemaking titled: "Air Quality State Implementation Plans; Approvals and Promulgations: Montana; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} National Ambient Air Quality Standards." Under section 110(k)(4) of the CAA, the EPA may conditionally approve a SIP based on a commitment from a state to adopt specific enforceable measures within 1 year from the date of final approval. In the EPA's April 20, 2016 rulemaking, the EPA took final action to approve revisions in the March 24, 2015 submittal to ARM 17.8.818(7)(a)(iii) on the condition that the State adopts and submits specific revisions within 1 year of EPA's final action on these infrastructure submittals; specifically to remove the phrase "24-hour average" in ARM 17.8.818(7)(a)(iii).¹ Montana submitted this amendment to their rules to EPA within 1 year, on October 14, 2016, and the EPA is proposing action on Montana's October 14, 2016 submittal in this rulemaking. Upon the EPA

¹ See "Section 128 and 2012 PM_{2.5} Cover Letter and PSD Commitment Letter" submitted to EPA on December 17, 2015, contained within this docket.

finding a timely meeting of Montana's commitment in full, the EPA's April 20, 2016 conditional approval of the SIP revisions would convert to a final approval of Montana's plan. In this action, the EPA proposes that Montana's October 14, 2016 submittal meets Montana's obligation under the conditional approval of ARM 17.8.818(7)(a)(iii) in our April 20, 2016 final rulemaking action.

II. What are the Changes that EPA is Proposing Action to Approve?

We are proposing to approve changes to Montana's SIP – in particular the revisions to ARM 17.8.818(7)(a)(iii) – as submitted on October 14, 2016. We are proposing to approve the changes that are consistent with the CAA and the EPA regulations as follows:

1. CAA section 110(a)(2)(C), which requires each state plan to include “a program to provide for ... the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [the NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter”;
2. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Montana's regulations in ARM 17.8 create enforceable obligations for sources;
3. CAA section 110(i) (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. As described in Section I, Montana fulfilled this requirement;

4. CAA section 110(l), provides that the EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. The revisions to ARM 17.8.818 would not interfere with sections 110(a)(2) and 110(i) of the Act, as they are in compliance with current federal regulations;
5. CAA section 161, which requires a SIP to contain emission limitations to prevent significant deterioration of air quality in regions designated as attainment or unclassifiable; and
6. Montana's SIP revision complies with the requirements of 40 CFR 51.166 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions.

III. Proposed Action

The EPA is proposing to approve a revision to Montana's SIP as submitted by the State of Montana on October 14, 2016, which remove "24-hour average" from ARM 17.8.818(7)(a)(iii).

IV. Incorporation by Reference

In this action, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing the incorporation by reference of a change to the State of Montana's SIP regarding removing "24-hour average" from ARM 17.8.818(7)(a)(iii). The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 13, 2018.

Douglas Benevento,
Regional Administrator,
Region 8.

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